
(2004) 03 GAU CK 0048

In the Gauhati High Court

Case No : Writ Petition (C) No. 101 (K) of 2002

Hampong Phom

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 29-03-2004

Acts Referred:

Citation : (2004) GLT 577 Supp

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : S. Dutta, B. Devnath, N. Mich and P.B. Chetry, for the Appellant; L.S. Jamir, for the Respondent

Judgement

B. Lamare, J.—Heard Mr. S. Dutta, learned Counsel for the Petitioner and Mr. L.S. Jamir for the Respondents.

2. The Petitioner was appointed as LDA in the office of the Deputy Commissioner, Tuensang on 11.5.65. On 20.5.69 the Petitioner was promoted to the post of UDA. After the separation of the Department of Food and Civil Supply the service of the Petitioner was taken to the Deptt. of Food and Civil Supply on Sept. 1967. By order dated 28.10.99 the Petitioner was intimated by Director of Food and Civil Supply, Respondent No. 3 that his actual date of birth was recorded as 24.12.42 and not 31.10.45.

3. After the Petitioner came to know of the said entry made in his service book the Petitioner submitted a representation intimating the authorities that his actual date of birth was 31.10.45 according to the School Certificate and the date of birth dated 24.12.42 was an overwriting of the date of birth of the Petitioner in the service book. However, by letter dated 5.6.2000 the Director of Food and Civil Supply intimated the Asstt. Director of Food and Civil Supply that the service of the Petitioner cannot be extended beyond 31.12.99 and as such direction was issued to submit all the pension papers of the Petitioner.

4. By another letter dated 30.6.2000 the Asstt. Director, Food and Civil Supply

has released the Petitioner from service with effect from 30.6.2000. The Petitioner then submitted his representation dated 20.3.2001 to the Secretary to the Govt. of Nagaland, Food and Civil Supplies Deptt. On the basis of the representation of the Petitioner, the Secretary to the Govt. of Nagaland, Food and Civil Supplies in his letter dated 9.4.2001 called for some clarification from the Director of Food and Civil Supplies with regard to the date of birth of the Petitioner. At the same time, in the said letter it is mentioned that there were so many discrepancies and anomalies recorded in the service book which are highly objectionable. In reply to the said letter, the Assistant Director, Food and Civil Supplies by his letter dated 11.5.01 intimated the Director of Food and Civil Supplies that it cannot be ascertained when the over writing against the date of birth and height had been made. However, according to the last entry made in the service book the date of birth of the Petitioner was recorded as 24.12.42.

5. I have heard learned Counsel for the parties and also perused the records.

6. The Petitioner has annexed the School certificate dated 15.4.65 as Annexure-1 to the writ petition and also made a statement in paragraph 5 of the affidavit-in-opposition that as per School certificate his date of birth was 31.10.45. The Respondents in their Affidavit-in-opposition in paragraph 5 of the Affidavit while replying to the statements made in paragraph 5 of the writ petition did not deny about the existence of the school certificate annexed by the Petitioner. The only plea taken by the Respondents in paragraph 5 of the Affidavit is that the Attesting Officer while certifying/attesting did not put his seal. Therefore, in absence of any specific denial of the existence of the school certificate the same has to be presumed as the correct certificate.

7. From the letter dated 11.5.01 issued by the Asstt. Director, Food and Civil Supplies to the Director of Food and Civil Supplies it is seen that the Asstt. Director has made a remark that it cannot be ascertained by when the over writing against the date of birth and height had been made. It is assumed that the over writing was not made intentionally but due to ignorance of rules. In the said letter it was also mentioned that the actual date of birth of the incumbent was 24.12.42 as per service book and year-wise disposition return submitted time to time by the office. This however is contradicted by the statement made by the Respondents in paragraph 7 of the Affidavit-in-opposition that the Petitioner was solely responsible for maintaining and keeping of service book not only of the Petitioner but also of all the staffs posted under the Asstt. Director, Food and Civil Supplies, Tuensang and therefore the question of tampering of the service book of the Petitioner by others does not arise. At the same time, the Petitioner has submitted an Undertaking as per Annexure-II of the Affidavit-in-opposition whereby it is stated that the tampering in the service book of the Petitioner was done by himself for his personal gain.

8. If the date of birth claimed by the Petitioner is 31.10.45 and the over writing of the date of birth is 24.12.42, this over writing of the date of birth cannot be an advantage to the Petitioner. On the other hand, in fact, it is a disadvantage to the

Petitioner. Therefore, from the statement made by the Respondents it can also be presumed that the tampering of the date of birth of the Petitioner was not intentional nor was done by the Petitioner.

9. It is admitted by the Government in the letter dated 9.4.01 from the Secretary to the Govt. of Nagaland, Food and Civil Supply wherein it is stated that there were many discrepancies and anomalies recorded in the service book which are highly objectionable. From this statement it is evident that the service book of the Petitioner was tampered in the date of birth from 31.10.45 to 24.12.42. From the Affidavit-in-opposition filed by the Respondents and also from the records produced, the Petitioner was shown to be matriculate but the Petitioner had read only upto Class-X and therefore, wrong entry was made in the service book showing the Petitioner as Matriculate. Admittedly, it is clear that the earlier date of birth was over written as 24.12.42 as it appears from the original service book.

10. For the aforesaid reasons, I am of the opinion that the Petitioner has been able to establish that his actual date of birth was 31.10.45 and his date of retirement shall be calculated from that date and not from 24.12.42. The Petitioner is therefore to retire from 1.11.2002 and he is entitled to remain in service till 31.10.02.

11. It is submitted by the learned Counsel for the Petitioner that the Petitioner has already retired and that the question of his reinstatement does not arise.

12. This petition is therefore disposed of with the direction that the Petitioner shall be treated as on service upto 31.10.02 and he shall be granted his service benefit till that date and the arrears due to the Petitioner shall be paid to him within 2 (two) months from the date a copy of this order is served on the Respondent No. 3, the Director, Food and Civil Supplies, Government of Nagaland, Kohima.

With the above direction this petition is disposed of.